

## § 100.4

## 30 CFR Ch. I (7–1–10 Edition)

TABLE XIV—PENALTY CONVERSION TABLE—  
Continued

Points	Penalty (\$)
108 .....	5,211
109 .....	5,645
110 .....	6,115
111 .....	6,624
112 .....	7,176
113 .....	7,774
114 .....	8,421
115 .....	9,122
116 .....	9,882
117 .....	10,705
118 .....	11,597
119 .....	12,563
120 .....	13,609
121 .....	14,743
122 .....	15,971
123 .....	17,301
124 .....	18,742
125 .....	20,302
126 .....	21,993
127 .....	23,825
128 .....	25,810
129 .....	27,959
130 .....	30,288
131 .....	32,810
132 .....	35,543
133 .....	38,503
134 .....	41,574
135 .....	44,645
136 .....	47,716
137 .....	50,787
138 .....	53,858
139 .....	56,929
140 .....	60,000
141 .....	63,071
142 .....	66,142
143 .....	69,213
144 or more .....	70,000

(h) The effect of the penalty on the operator's ability to continue in business. MSHA presumes that the operator's ability to continue in business will not be affected by the assessment of a civil penalty. The operator may, however, submit information to the District Manager concerning the financial status of the business. If the information provided by the operator indicates that the penalty will adversely affect the operator's ability to continue in business, the penalty may be reduced.

[72 FR 13635, Mar. 22, 2007, as amended at 73 FR 7209, Feb. 7, 2008]

### § 100.4 Unwarrantable failure and immediate notification.

(a) The minimum penalty for any citation or order issued under section 104(d)(1) of the Mine Act shall be \$2,000.

(b) The minimum penalty for any order issued under section 104(d)(2) of the Mine Act shall be \$4,000.

(c) The penalty for failure to provide timely notification to the Secretary under section 103(j) of the Mine Act will be not less than \$5,000 and not more than \$60,000 for the following accidents:

(1) The death of an individual at the mine, or

(2) An injury or entrapment of an individual at the mine, which has a reasonable potential to cause death.

[72 FR 13635, Mar. 22, 2007, as amended at 74 FR 68919, Dec. 29, 2009]

### § 100.5 Determination of penalty amount; special assessment.

(a) MSHA may elect to waive the regular assessment under § 100.3 if it determines that conditions warrant a special assessment.

(b) When MSHA determines that a special assessment is appropriate, the proposed penalty will be based on the six criteria set forth in § 100.3(a). All findings shall be in narrative form.

(c) Any operator who fails to correct a violation for which a citation has been issued under Section 104(a) of the Mine Act within the period permitted for its correction may be assessed a civil penalty of not more than \$7,500 for each day during which such failure or violation continues.

(d) Any miner who willfully violates the mandatory safety standards relating to smoking or the carrying of smoking materials, matches, or lighters shall be subject to a civil penalty of not more than \$375 for each occurrence of such violation.

(e) Violations that are deemed to be flagrant under section 110(b)(2) of the Mine Act may be assessed a civil penalty of not more than \$220,000. For purposes of this section, a flagrant violation means “a reckless or repeated failure to make reasonable efforts to eliminate a known violation of a mandatory health or safety standard that substantially and proximately caused, or reasonably could have been expected to cause, death or serious bodily injury.”

[72 FR 13635, Mar. 22, 2007, as amended at 73 FR 7210, Feb. 7, 2008; 74 FR 68919, Dec. 29, 2009]